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**IN THE
COURT OF APPEALS OF INDIANA**

MARILYN KIMBRO,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0512-CR-1235
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49F19-0502-CM-28241

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Marilyn Kimbro appeals her conviction for resisting law enforcement, as a class A misdemeanor.¹

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

On December 28, 2004, a warrant was issued for Kimbro's arrest for failing to appear on a driving while suspended charge. On February 21, 2005, Beech Grove Police Officer James Baughn drove by Kimbro's residence and saw her standing outside her garage. Officer Baughn "knew that she had a warrant for her arrest" and determined that it was still valid. (Tr. 36). Officer Baughn approached Kimbro, told her there was a warrant for her arrest and "placed handcuffs on her." (Tr. 37). At that point, Kimbro "retreated back into the garage," and Officer Baughn followed her. (Tr. 42). Kimbro wanted to show Officer Baughn a letter from the Bureau of Motor Vehicles indicating that Kimbro's driving privileges would be reinstated if she had no other outstanding suspensions. Officer Baughn, however, told Kimbro that "the warrant superceded any letter that she had," and that she needed to come with him. (Tr. 42, 53). Shortly thereafter, Beech Grove Police Officer Joel Comstock arrived to assist Officer Baughn.

¹ Ind. Code § 35-44-3-3.

Kimbro then asked Officer Baughn for a drink of chocolate milk, to let her dog inside the house, and to lock up her house and vehicle. Officer Baughn “figured that if [he] would do these favors for her, that she would finally come along and exit the garage with [him].” (Tr. 46). Kimbro, however, refused to go with the officers.

Officers Baughn and Comstock “were both trying to reason with [Kimbro].” (Tr. 46). Kimbro still would not leave with the officers. Officer Baughn told Kimbro that “[she] could either walk out with [them] or [they would] have to forcibly remove [her].” (Tr. 47). Kimbro threatened to sue the officers if they injured her by forcibly moving her.

The officers then got on either side of Kimbro, each taking an arm, and “had to forcibly walk her out of the garage.” (Tr. 48). Kimbro began “pushing against” the officers. (Tr. 48). She “started moving back and forth pushing on” the officers, “screaming and kind of thrashing about.” (Tr. 48, 81). Kimbro was “[t]hrowing her weight from side to side,” causing the officers to lose their balance. (Tr. 81). “She pushed [Officer Baughn] into her car. She pushed Officer Comstock into the side of the garage.” (Tr. 48).

Although Kimbro had a condition that affected her walking and balance, she was “okay” when she wore her ankle braces; according to Kimbro’s testimony, she was wearing her braces when she was arrested. (Tr. 115). Furthermore, she did not complain to either officer that her balance was poor or that walking was difficult.

When the officers finally got Kimbro to Officer Baughn’s patrol car, “she refused to get into the car. And Officer Comstock had to forcibl[y] put her in [Officer Baughn’s] car.” (Tr. 49). The officers did not use the amount of force on Kimbro that they

normally would have under similar circumstances because of Kimbro's age – seventy-three years.

On February 21, 2005, the State charged Kimbro with resisting law enforcement. A jury trial was held on December 8, 2005, after which the jury found Kimbro guilty.

DECISION

Kimbro asserts that the evidence was insufficient to sustain her conviction for resisting law enforcement. Specifically, Kimbro contends that “[t]he facts fail to support that, beyond a reasonable doubt, [she] was able to use force and indeed use[d] force in attempting to dissuade the officers from arresting her.” Kimbro's Br. 8.

Our standard of review for sufficiency of the evidence is well settled. We will neither reweigh the evidence nor judge the credibility of witnesses. Snyder v. State, 655 N.E.2d 1238, 1240 (Ind. Ct. App. 1995). We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and, if there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Pursuant to Indiana Code section 35-44-3-3(a)(1), a person who knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties as an officer” commits resisting law enforcement. “‘Forcibly’ is a required element” of resisting law enforcement. Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993). “Forcibly resists” means to use “strong, powerful, violent means” to evade a law enforcement official's rightful exercise of his or her duties. Id. Thus, mere passive

resistance is insufficient to sustain a conviction for resisting law enforcement. See Ajabu v. State, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998).

In Guthrie v. State, 720 N.E.2d 7 (Ind. Ct. App. 1999), trans. denied, the facts revealed that officers transported Guthrie to lock-up, where he refused to exit the police car. Officers had to physically remove Guthrie from the vehicle. Guthrie, however, refused to stand. The officers then had to lift Guthrie to his feet and carry him. This court determined that Guthrie's actions constituted resisting law enforcement because Guthrie "did resist in some meaningful way that extended beyond mere passive resistance." 720 N.E.2d at 9. Additionally, in Johnson v. State, 833 N.E.2d 516 (Ind. Ct. App. 2005), this court found sufficient evidence to support the conviction for resisting law enforcement where Johnson turned and pushed away with his shoulders as officers attempted to search him, and officers then had to use force to place him in a police vehicle after he refused to go and "stiffened up" his body.

In this case, Kimbro refused to go with officers. The officers, therefore, had to take her by the arms and walk her to the police vehicle. As the officers attempted to get Kimbro to the vehicle, she started "thrashing about" and throwing her weight against the officers, enough so to cause the officers to lose their balance. The officers also had to use force to get Kimbro into the police vehicle. We find the evidence sufficient to sustain her conviction.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.